pare and execute a new will than a codicil. A will should be reviewed periodically, especially when there are changes in law or in family or financial situations. Such circumstances include, but are not limited to:

- marriage, remarriage, or divorce occurring after the will was written;
- birth of a child or death of a beneficiary;
- a move to another state;
- acquisition of additional property or substantial increase in the value of property; and
- amendment of federal or state laws affecting death taxes.

Do not try to change a will yourself. Doing so will not accomplish the desired changes and may make your will invalid. Don't draw a line through a paragraph or write the word "omit." Don't write extra words on lines. Instead, revoke a will by executing a new one that states all prior wills are invalid. Or destroy your will with the intent to revoke it. Someone with no interest in your estate who can attest to your mental competence and intention should witness the will's destruction.

Marriage. Marriage does not automatically revoke a prior will. If you marry and do not create a new will, your surviving spouse may not be included in the will because it was made prior to marriage. He or she may be left with no option other than seeking an elective share of the estate.

Birth or adoption. The subsequent birth or adoption of a child or entitlement of an after-born illegitimate child does not automatically revoke a will. Any of these beneficiaries would, however, have the right to share in your estate to the same extent as they would have shared had you died intestate unless any of the following is true:

- You made some provisions for the child in your will or through a trust that takes effect after death.
- You intentionally made no provision for the child.
- You had living children when the will was executed and all were disinherited under the will.
- Your surviving spouse receives all the estate under the will.

A will or a part of it that has been revoked cannot be revived unless the will is re-executed or another will is executed that incorporates the revoked part or parts.

Divorce. A divorce after a will has been written does not revoke the will. The divorce does, however, revoke all provisions in the will in favor of the divorced spouse. If the testator wants to make the divorced spouse a beneficiary, he or she should write a new will after the date upon which the divorce becomes final. If any provisions for the divorced spouse are revoked under this section, they are revived if and when the testator remarries the former spouse.

Remember this with caution: Before the final decree of divorce has been entered, each spouse retains his or her rights to the other spouse's property, unless the parties have entered into a property agreement settling those rights. If you are involved in a divorce proceeding, ask your attorney how you can protect your property in the event you die before the final decree of divorce has been entered.

Restrictions That Apply to a Will

Disinheriting. In North Carolina, a spouse cannot be disinherited under a will. (See the companion publications in the Estate Planning series.) Generally, the testator has the right to disinherit persons, including children, who would otherwise inherit property had he/she died without a will. Children have no vested interest in either parent's property.

Location. Location of property affects a will. Generally, a will that disposes of land (*real property*) located in North Carolina must be signed and witnessed in accordance with North Carolina law to be valid. In contrast, a will disposing of personal property is determined by the laws of the state or country where the decedent was domiciled (living) at the time of death and is valid even though the personal property is located in North Carolina. See *How Do You Own Your Property?* (AG-688-01).

If you own land in another state and your domicile (legal residence) is in North Carolina, the land must be probated in the state where it is located. North Carolina does not have the legal jurisdiction to probate land located elsewhere. Your will can include provisions for dealing with land located in another state that will make it easier for your executor. Your attorney can also discuss options for avoiding the second probate.

If you own *personal property* located in another state, North Carolina has jurisdiction because you are domiciled in North Carolina and your personal property elsewhere can be relocated to North Carolina.

Exempt property. A will cannot dispose of property owned by a husband and wife in *tenancy by entirety*. Such land is owned, after the death of one, solely by the survivor. See *How Do You Own Your Property?* (AG-688-01). If property is owned by two or more persons in *joint tenancy with right of survivorship*, the survivor takes all. Proceeds of insurance policies, pension funds, U.S. Savings Bonds, payable-on-death (POD) deposits, or other assets where a beneficiary is named cannot be disposed of by a will unless the estate is named as beneficiary.

Executing a Will

A properly executed will (or codicil) must be signed by at least two persons (preferably three) who witnessed the testator signing the will. The witnesses need not and usually do not read the will. Avoid using the beneficiaries named in the will as witnesses. All gifts by will made to witnesses or their spouses are void unless there are two other witnesses such that the witnessing beneficiary is not needed. Wills that are not executed in the above manner are legal in North Carolina if they meet certain conditions.

A *holographic will* is handwritten by the testator and does not have to be signed by witnesses. To be valid in North Carolina, a holographic will must be entirely in the testator's handwriting and signed by the testator. In addition, it must be found among his or her personal effects or in the hands of a person entrusted with its safekeeping.